

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91428; File No. SR-NSCC-2021-004)

March 29, 2021

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Recovery & Wind-down Plan

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 23, 2021, National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A)³ of the Act and Rule 19b-4(f)(4) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change⁵ consists of amendments to the R&W Plan to (i) reflect business and product developments, (ii) make certain changes to improve the clarity of

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(4).

⁵ Capitalized terms not defined herein are defined in the Rules and Procedures of NSCC (the “Rules”), available at https://dtcc.com/~media/Files/Downloads/legal/rules/nscc_rules.pdf, or in the Recovery & Wind-down Plan of NSCC (the “R&W Plan” or “Plan”).

the Plan, (iii) remove provisions covering certain “business-as-usual” actions, and (iv) make certain technical corrections, as described in greater detail below.

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would amend the R&W Plan to (i) reflect business and product developments, (ii) make certain changes to improve the clarity of the Plan, (iii) remove provisions covering certain “business-as-usual” actions, and (iv) make certain technical corrections. Each of the proposed revisions is further described below.

Background

The R&W Plan was adopted in August 2018⁶ and is maintained by NSCC for compliance with Rule 17Ad-22(e)(3)(ii) under the Act.⁷ The R&W Plan sets forth the

⁶ See Securities Exchange Act Release Nos. 83974 (August 28, 2018), 83 FR 44988 (September 4, 2018), (SR-NSCC-2017-017); and 83955 (August 27, 2018), 83 FR 44340 (August 30, 2018) (SR-NSCC-2017-805).

⁷ 17 CFR 240.17Ad-22(e)(3)(ii). NSCC is a “covered clearing agency” as defined in Rule 17Ad-22(a)(5) under the Act and must comply with paragraph (e) of Rule 17Ad-22.

plan to be used by the Board and NSCC management in the event NSCC encounters scenarios that could potentially prevent it from being able to provide its critical services as a going concern. The R&W Plan is structured as a roadmap that defines the strategy and identifies the tools available to NSCC to either (i) recover, in the event it experiences losses that exceed its prefunded resources (such strategies and tools referred to herein as the “Recovery Plan”) or (ii) wind-down its business in a manner designed to permit the continuation of NSCC’s critical services in the event that such recovery efforts are not successful (such strategies and tools referred to herein as the “Wind-down Plan”). The recovery tools available to NSCC are intended to address the risks of (a) uncovered losses or liquidity shortfalls resulting from the default of one or more of its Members, and (b) losses arising from non-default events, such as damage to NSCC’s physical assets, a cyber-attack, or custody and investment losses, and the strategy for implementation of such tools. The R&W Plan also describes the strategy and framework for the orderly wind-down of NSCC and the transfer of its business in the event the implementation of the available recovery tools does not successfully return NSCC to financial viability.

The R&W Plan is managed and developed by NSCC’s parent company, the Depository Trust & Clearing Corporation (“DTCC”),⁸ and is managed by the Office of Recovery & Resolution Planning (referred to in the Plan as the “R&R Team”) on behalf

⁸ DTCC operates on a shared service model with respect to NSCC and its other affiliated clearing agencies, The Depository Trust Company (“DTC”) and Fixed Income Clearing Corporation (“FICC”). Most corporate functions are established and managed on an enterprise-wide basis pursuant to intercompany agreements under which it is generally DTCC that provides relevant services to NSCC, DTC and FICC (collectively, the “Clearing Agencies”).

of NSCC, with review and oversight by the DTCC Management Committee and the Board.

Proposed Amendments to the R&W Plan

The Board, or such committees as may be delegated authority by the Board from time to time pursuant to its charter, is required to review and approve the R&W Plan biennially.⁹ In connection with the first biennial review of the Plan, NSCC is proposing the revisions described in greater detail below. The proposed rule change is designed to update and enhance the clarity of the Plan to ensure it is current in the event it is ever necessary to be implemented. None of the proposed changes modify NSCC's general objectives and approach with respect to its recovery and wind-down strategy as set forth under the current Plan.

A. Proposed Changes to Reflect Business or Product Developments

1. Updates to DTCC Business Profile, Intercompany Arrangements, FMI Links and Governance

NSCC is proposing the following changes to the DTCC Business Profile, Intercompany Arrangements, FMI Links and Governance sections of the Plan based upon business updates that have occurred since the time the Plan was adopted.

Section 2.1 (DTCC Business Profile) of the Plan describes that DTCC is a user-owned and user-governed holding company for a group of direct and indirect subsidiaries and joint ventures. This section includes a brief summary of each of the three subsidiaries (DTC, FICC and NSCC) that have been designated as systemically important financial market utilities ("SIFMUs") by the Financial Stability Oversight Council. The

⁹ Supra note 6.

proposed rule change would revise the introductory paragraph of this section to remove reference to joint ventures because DTCC currently has no joint ventures.

Section 2.4 (Intercompany Arrangements) of the Plan currently describes how corporate support services are provided to NSCC from DTCC, and to DTCC's other subsidiaries through intercompany agreements under a shared services model. NSCC is proposing to update Table 2-A (SIFMU Legal Entity Structure and Intercompany Agreements), which delineates NSCC's affiliates, to reflect the name change of Omgeo Pte Ltd by removing "Omgeo Pte Ltd" and replacing it with the new name of this entity, "DTCC Singapore Pte. Ltd." A related footnote would also be added to make clear that the services provided by DTCC Singapore Pte. Ltd. are performed through its branch office in Manila, DTCC Manila. Additionally, this section includes a separate table, Table 2-B, that lists each of the DTCC facilities utilized by the Clearing Agencies and indicates whether the facility is owned or leased by DTCC. NSCC proposes to update this table to add Boston, Massachusetts as an additional location of a DTCC facility and to indicate that this facility is leased by DTCC.

Currently, Section 2.5 (FMI Links) of the Plan describes some, but not all, of the key financial market infrastructures ("FMIs"), both domestic and foreign, that NSCC has identified as critical "links."¹⁰ In order to better align with the structure of DTCC's inventory of links maintained by DTCC's Systemic Risk Office ("SRO"), which includes

¹⁰ As defined in Rule 17Ad-22(a)(8) under the Act, a link "means, for purposes of paragraph (e)(20) of [Rule 17Ad-22], a set of contractual and operational arrangements between two or more clearing agencies, financial market utilities, or trading markets that connect them directly or indirectly for the purposes of participating in settlement, cross margining, expanding their services to additional instruments or participants, or for any other purposes material to their business." 17 CFR 240.17Ad-22(a)(8).

all of NSCC’s link relationships, the proposed rule change would delete the current “FMI Links” section of the R&W Plan and replace it with a revised version of Section 2.5 that would include an overview of NSCC’s link arrangements, a related footnote to the definition of a “link” under Rule 17Ad-22(a)(8) under the Act, and a table (Table 2-C: Links) listing all of NSCC’s FMI link arrangements. The table would list the link, the link category (i.e., whether the link is a central counterparty, settlement interface, or matching utility), and a brief description. The proposed rule change would also add a table (Table 2-D: Schedule A Relationships) that would identify certain critical external service providers that, as determined by NSCC’s management, do not meet the specified criteria of “link” but nevertheless are subject to the same review process as is conducted for links, referred to within NSCC as “Schedule A Relationships,” and a related footnote. This change would align with the structure of SRO’s inventory of Schedule A Relationships.

Section 4.3 (Recovery and Wind-down Program Governance) of the Plan currently contains a paragraph that identifies DTCC’s “R&R Steering Group” as the internal group responsible for ensuring that each of the Clearing Agencies observes recovery planning requirements, and that recovery planning is integrated into the Clearing Agencies’ overall governance processes including the preparation, review, and filing of the Clearing Agencies’ R&W Plans. Pursuant to the proposed rule change, NSCC would revise Section 4.3 to reflect an internal organizational name change. The proposal would change the name of the R&R Steering Group to the “Recovery and Wind-

down Planning Council” to reflect its role as an advisory body.¹¹ This name change would not change the composition, role or responsibilities of this internal group, which includes selected members of DTCC’s Management Committee and members of DTCC’s financial and operational risk management, product management, legal, and treasury/finance teams that are responsible for providing strategic guidance and direction for the recovery and wind-down program¹² and the Plan. Additionally, for purposes of clarification, the proposal would add the words “, where necessary,” to refer to when the council would engage with internal working groups.

2. Liquidity Shortfalls

Section 5.3 (Liquidity Shortfalls) of the Plan identifies tools that may be used to address foreseeable shortfalls of NSCC’s liquidity resources following a Member default. The goal in managing NSCC’s qualified liquidity resources is to maximize resource availability in an evolving stress situation, to maintain flexibility in the order and use of sources of liquidity, and to repay any third-party lenders of liquidity in a timely manner. This section includes a table (Table 5-C) that lists NSCC liquidity tools

¹¹ In accordance with DTCC’s Policy on Governance of Internal Committees and Councils, a “council” is defined as an advisory body that has no decision-making authority. A council may be formed by any committee or a Managing Director. Councils will share information, discuss topics, and make recommendations to its initiating committee or Managing Director. Councils report up to their initiating committee or Managing Director.

¹² In 2013, DTCC launched its Recovery & Resolution Planning Program for DTC, NSCC, and FICC as part of its continued commitment to enhancing risk management. The Office of Recovery & Resolution Planning was established to manage the program and the development of the recovery and wind-down plans for the Clearing Agencies.

and resources.¹³ The proposed rule change would update this section to include a reference to cash proceeds from outstanding term debt issuance in addition to the other examples of NSCC’s qualifying liquid resources. A footnote would also be added providing the citation to NSCC’s advance notice filing covering the term debt issuance.¹⁴

B. Proposal to Make Certain Clarifications to the R&W Plan

1. Critical Services and Indicative Non-Critical Services

Section 3 (Critical Services) of the Plan defines the criteria for classifying certain of NSCC’s services as “critical,”¹⁵ and identifies such critical services and the rationale for their classification. The identification of NSCC’s critical services is important for evaluating how the recovery tools and the wind-down strategy would facilitate and provide for the continuation of NSCC’s critical services to the markets it serves. This section also includes a list of indicative non-critical services.

This section includes a table (Table 3-B: NSCC Critical Services) that lists each of the services, functions or activities that NSCC has identified as “critical” based on the

¹³ Table 5-C lists the following NSCC liquidity tools: Utilize short-settling liquidating trades, Increase the speed of portfolio asset sales, Credit Facility, Unissued Commercial Paper, Non-Qualifying Liquid Resources, and Uncommitted stock loan and equity repos.

¹⁴ See Securities Exchange Act Release No. 87912 (January 8, 2020), 85 FR 2187 (January 14, 2020) (SR-NSCC-2019-802).

¹⁵ The criteria that is used to identify an NSCC service or function as critical includes consideration as to whether (1) there is a lack of alternative providers or products; (2) failure of the service could impact NSCC’s ability to perform its central counterparty services; (3) failure of the service could impact NSCC’s ability to perform its netting services, and, as such, the availability of market liquidity; and (4) the service is interconnected with other participants and processes within the U.S. financial system (for example, with other FMIs, settlement banks, broker-dealers, and exchanges).

applicability of the criteria. As more fully described below, the proposed rule change would clarify in Table 3-B the description of some of the critical services and update the table to include an additional critical service. While the clarifying changes do not change the classification of the relevant service (as being either “critical” or “indicative non-critical”), nor impact the existing classification of other services, NSCC believes these revisions would enhance the clarity of the descriptions of them.

First, the proposed rule change would revise the entries for “3. Obligation Warehouse” and “10. CNS/Prime Broker Interface” to delete the check mark denoting the lack of alternative providers and products as one of the determinants for its classification as a critical service. Second, the proposed rule change would replace the name of the service identified in the current plan as exchange-traded fund “5. ETF” to exchange-traded products “5. ETPs” in order to more accurately align with the scope of what is covered by these services. Third, currently the critical service “6. ACATS”¹⁶ is described as “A service under which Members can transfer their customers’ assets from one brokerage account and/or bank to another, while processing through CNS.” The proposed rule change would add at the end of this description the phrase “, DTC, Obligation Warehouse, OCC and others,” in order to include a more comprehensive description of this service. Fourth, in the description of “11. Balance Order Netting,” the proposed rule change would delete the phrase “balance order transactions” and replace it with “Balance Order Contracts” because it is a defined term under the Rules.¹⁷

¹⁶ “ACATS” refers to NSCC’s Automated Customer Accounts Transfer Service.

¹⁷ Pursuant to Rule 5, supra note 5, “Balance Order Contracts” is defined as Compared Contracts for Balance Order Securities and other transactions in respect of Balance Order Securities submitted to NSCC under the Rules.

Also, the proposed rule change would update Table 3-B (NSCC Critical Services) to add “Account Information Transmission” (“AIT”). This new entry would include in the description of AIT¹⁸ that it is being enhanced in support of the bulk transfer initiative, which is an industry effort designed to prepare carrying broker-dealers for an emergency mass transfer of large quantities of customer accounts and assets from a distressed broker to a financially secure broker.¹⁹ In the column that delineates the determinant for its classification as a critical service, this new entry would have a check mark that denotes this is because of a lack of alternative providers and products.

2. Member Default Losses through the Crisis Continuum

Section 5 (Member Default Losses through the Crisis Continuum) of the Plan is comprised of multiple subsections that identify the risk management surveillance, tools, and governance that NSCC may employ across an increasing stress environment, referred to as the “Crisis Continuum.”²⁰ This section currently identifies, among other things, the tools that can be employed by NSCC to mitigate losses, and mitigate or minimize

¹⁸ As set forth in Table 3-B of the Plan, the “AIT” service is described as a secure data transport facility that allows NSCC Members to perform a single movement of many customer brokerage accounts.

¹⁹ See <https://www.sifma.org/resources/general/bulk-transfer-playbook>.

²⁰ As set forth in the Recovery Plan, the phases of the “Crisis Continuum” include (1) a stable market phase, (2) a stressed market phase, (3) a phase commencing with NSCC’s decision to cease to act for a Member or Affiliated Family, and (4) a recovery phase.

liquidity needs, as the market environment becomes increasingly stressed. As more fully described below, the proposed rule change would clarify certain language.

Section 5.2.1 (Stable Market Phase) describes NSCC’s risk management activities in the normal course of business. These activities include (i) the routine monitoring of margin adequacy through daily evaluation of backtesting and stress testing results that review the adequacy of NSCC’s margin calculations, and escalation of those results to internal and Board committees and (ii) routine monitoring of liquidity adequacy through review of daily liquidity studies that measure sufficiency of available liquidity resources to meet cash settlement obligations of the Member that would generate the largest aggregate payment obligation. Further, under the heading “Market Risk Monitoring and Stable Market Indicators,” this section states that the amount of Clearing Fund required from each Member is determined principally by Value-at-Risk (“VaR”) calculations,²¹ and that in order to ensure the VaR model accurately reflects market conditions and provides adequate protection against market risk, NSCC evaluates several factors on an ongoing basis.

The proposed rule change would remove the following factor as one of those evaluated, because it is no longer part of NSCC’s model calculation, “Implied volatility to assess whether a potential increase in market price volatility may not be fully incorporated in the historical price moves.”²² The elimination of the language regarding

²¹ As described in the Plan, Value-at-Risk (“VaR”) calculations are based on the potential price-change volatility of unsettled positions according to NSCC’s risk-based margin model.

²² The remaining factors set forth in the Plan that NSCC evaluates to ensure that the VaR model accurately reflects market conditions and provides adequate protection against market risk are: (i) backtesting and other model performance monitoring to assess the robustness of the Clearing Fund requirements, and

implied volatility provides a more accurate representation of the risk model calculation. Consistent with the above, NSCC would also remove the paragraph in this section that states that implied market price volatility as measured by benchmarks such as the VIX index does not indicate material changes in market price volatility are expected.

Section 5.2.4 (Recovery Corridor and Recovery Phase) outlines the early warning indicators to be used by NSCC to evaluate its options and potentially prepare to enter the “Recovery Phase,” which phase refers to the actions to be taken by NSCC to restore its financial resources and avoid a wind-down of its business. Included in this section are descriptions of potential stress events that could lead to recovery, and several early warning indicators and metrics that NSCC has established to evaluate its options and potentially prepare to enter the Recovery Phase. These indicators, which are referred to in the Recovery Plan as recovery corridor indicators (“Corridor Indicators”),²³ are calibrated against NSCC’s financial resources and are designed to give NSCC the ability to replenish financial resources, typically through business as usual (“BAU”) tools applied prior to entering the Recovery Phase.

Included in this section is a table (Table 5-A: Corridor Indicators) that for each Corridor Indicator identifies the (i) measures of the indicator, (ii) evaluations of the status of the indicator, (iii) metrics for determining the status of the deterioration or

(ii) stress testing based on real historical and hypothetical scenarios to assess the margin adequacy under extreme but plausible market conditions. The Clearing Fund Formula is described in Procedure XV (Clearing Fund Formula and Other Matters), supra note 5.

²³ The majority of the Corridor Indicators, as identified in the Recovery Plan, relate directly to conditions that may require NSCC to adjust its strategy for hedging and liquidating a defaulting Member’s portfolio, and any such changes would include an assessment of the status of the Corridor Indicators.

improvement of the indicator, and (iv) “Corridor Actions,” which are steps that may be taken to improve the status of the indicator,²⁴ as well as management escalations required to authorize those steps. For the entry in the table for “Hedge Effectiveness,” the proposed rule change would revise the text for clarity by adding to the existing description of measures of this indicator that hedge effectiveness is most relevant prior to commencing the hedging and liquidation strategy but is updated as necessary with changes in market prices and/or position liquidations. Also, the text that identifies Financial Risk Management as the internal group responsible for measuring the metrics for determining the status of the deterioration or improvement of the “Hedge Effectiveness” indicator would be revised to add that this is done with input from NSCC’s investment advisor.

Section 5.2.4 also includes language that requires NSCC management to review the Corridor Indicators and the related metrics at least annually and modify these metrics as necessary in light of observations from simulation of Member defaults and other analyses. In order to more closely align with the biennial cycle of DTCC’s multi-member closeout simulation exercise, the proposed rule change would shift the timing of management’s review of the Corridor Indicators and related metrics from annually to biennially. NSCC believes this change is necessary for consistency with the cycle of the multi-member closeout simulation, in which the Corridor Indicators and metrics are assessed as part of the simulation exercise.

²⁴ In this regard, the Corridor Actions that would be identified in the Plan are indicative but not prescriptive; therefore, if NSCC needs to consider alternative actions due to the applicable facts and circumstances, the escalation of those alternative actions would follow the same escalation protocol identified in the Plan for the Corridor Indicator to which the action relates.

There is an additional table in Section 5.2.4, (Table 5-B: Loss Waterfall Tools) that delineates the tools that comprise NSCC’s loss allocation waterfall as set forth under the Rules.²⁵ This table has four columns (“Order,” “Tool,” “Relevant Rules/Documents,” and “Responsible Body/Personnel”) and is organized by the order in which the liquidity resources are to be applied by NSCC. Within Table 5-B, Corporate Contribution is the first entry under the column labeled “Tool.” Currently, the narrative for this entry includes a description of Corporate Contribution and delineates that in the event of a cease to act, before applying the Clearing Fund deposits of Members (other than the defaulting Member) to cover any resulting loss, NSCC will apply the Corporate Contribution.²⁶ For purposes of clarity, this language would be revised to remove the words “applying the Clearing Fund Deposits of” and replace them with “charging the Members on a pro rata basis.”

Within this same entry in Table 5-B, the proposed rule change would also revise the current text of the definition of Corporate Contribution, in order to more closely align with how this term is defined under Rule 4. Specifically, pursuant to the proposed rule change the definition of Corporate Contribution would be revised to state that, “The Corporate Contribution is an amount that is equal to 50% of the amount calculated by NSCC in respect of its General Business Risk Capital Requirement for losses that occur over any rolling 12 month period.”²⁷

²⁵ Rule 4, supra note 5.

²⁶ Id.

²⁷ Pursuant to Rule 4, supra note 5, for any loss allocation pursuant to Section 4 of Rule 4, whether arising out of or relating to a Defaulting Member Event or a Declared Non-Default Loss Event, NSCC’s corporate contribution to losses or liabilities that are incurred by NSCC with respect to an Event Period (“Corporate

Additionally, with respect to the second entry in Table 5-B, “Loss Allocation,” the descriptive text in the “Responsible Body/Personnel” column would be revised to more closely align with the same language contained in Rule 4. The revised text would state, “Members will be obligated to pay the loss allocation on the second business day after the Corporation issues any such notice and to continue to fully fund their Clearing Fund required deposits to the extent of any shortfalls.”

3. Non-Default Losses

Section 6 (Non-Default Losses) of the Plan outlines how NSCC would address losses that result other than from a Member default. This section provides a roadmap to other documents that describe these events in greater detail and outlines NSCC’s approach to monitoring losses that could result from a non-default event. This section also includes a description of Rule 60 (Market Disruption and Force Majeure), referred to in the Plan as the “Force Majeure Rule,”²⁸ which pertains to how NSCC addresses extraordinary events that occur outside the control of NSCC and its Members. As more fully described below, the proposed rule change would clarify certain language.

Section 6.4 (Resources to Cover Non-Default Losses) provides that NSCC maintains two categories of financial resources to cover losses and expenses arising from non-default risks or events: (i) Liquid Net Assets Funded by Equity (“LNA”), including, pursuant to Rule 4, the required Corporate Contribution,²⁹ and (ii) loss-allocation charges

Contribution”) shall be an amount that is equal to fifty (50) percent of the amount calculated by NSCC in respect of its General Business Risk Capital Requirement as of the end of the calendar quarter immediately preceding the Event Period.

²⁸ Supra note 6.

²⁹ See Securities Exchange Act Release Nos. 84428 (October 15, 2018), 83 FR 53128 (October 19, 2018) (SR-NSCC-2018-008); and 89360 (July 21, 2020), 85

to Members in accordance with the provisions of Rule 4.³⁰ Following an overview of the four buckets of LNA which can be applied towards non-default losses,³¹ there is a paragraph under the heading “Loss Allocation to Members, backed by the Clearing Fund” that provides that non-default losses could be allocated among Members as provided in Rule 4. There is sentence that describes the timeframe in which such losses charged to Members are required to be paid. Currently, this sentence states that losses are to be paid by Members “within 2 business days of the date of receipt of a notice of a loss allocation charge” However, this is not the same language used to describe this timing in Rule 4. In order to be consistent with the language formulation set out in Rule 4, the proposed rule change would revise this sentence to state, “Losses charged to Members are required to be paid by Members on the second business day after the Corporation issues any such notice of a loss allocation charge and, if not timely paid by any Member, the Corporation may treat that Member as having failed to satisfy its

FR 45280 (July 27, 2020) (SR-NSCC-2020-014) (filings amending the Clearing Agency Policy on Capital Requirements (the “Capital Policy”) and the Clearing Agency Capital Replenishment Plan (the “Capital Plan”). The initial Capital Policy and Capital Plan were approved by the Commission in 2017 – see Securities Exchange Act Release No. 81105 (July 7, 2017), 82 FR 32399 (July 13, 2017) (SR-DTC-2017-003, SR-NSCC-2017-004, SR-FICC-2017-007).

³⁰ Rule 4, supra note 5.

³¹ As set forth in the Plan, NSCC maintains the following four buckets of LNA, which can be applied towards a non-default loss: (i) General Business Risk Capital as determined in the Capital Policy, supra note 29, (ii) the Corporate Contribution, (iii) a “Buffer,” as described in the Capital Policy, and (iv) excess LNA, which refers to any available LNA held at NSCC above the required amounts for General Business Risk Capital, the Corporate Contribution, and Buffer.

obligation and apply the Clearing Fund deposit of that Member to satisfy its loss allocation obligation.”³²

Section 6.6 (Market Disruption and Force Majeure Rule) describes the Force Majeure Rule. The Force Majeure Rule was adopted at the same time as the Plan³³ and provides an additional resiliency tool designed to mitigate the risks caused by market disruption events and thereby minimize the risk of financial loss that may result from such events. The proposed rule change would remove the following phrase after the reference to the Force Majeure Rule in the first paragraph of this section, “, adopted in conjunction with this Plan,” because it is not necessary as both the Plan and the Force Majeure Rule are no longer newly adopted. In addition, to remain consistent with the usage of “Force Majeure” and “Market Disruption Event” throughout this section, NSCC would conform all references to the defined terms “Force Majeure” and “Market Disruption Event,” so that they appear as capitalized terms.

The proposed rule change would also make revisions to the second paragraph of Section 6.6. First, for purposes of clarity and readability, the following text would be removed from the beginning of the second sentence: “Most FMIs have rules designed to deal with force majeure or market disruption events, and.” Second, the reference to “Superstorm Sandy” would be removed from the last sentence of this paragraph along with the related footnote that references Superstorm Sandy as an example of circumstances in which NSCC needed to fashion a work-around necessitated by a force

³² Rule 4, supra note 5.

³³ Supra note 6.

majeure event. NSCC believes inclusion of references to Superstorm Sandy are outdated and no longer necessary to be included in the Plan.

C. Remove Provisions Covering Certain “Business-as-Usual” Actions

Section 8.6 (Actions and Preparation) of the Plan sets forth the legal framework and strategy for the orderly wind-down of NSCC if the use of the recovery tools described in the Recovery Plan do not successfully return NSCC to financial viability. This section includes an overview of the actions and preparations to be taken by NSCC and DTCC in connection with executing the wind-down portions of the Plan. Section 8.6.1 (Business-as-Usual Actions) describes those actions that NSCC or DTCC may take to prepare for wind-down in the period before NSCC experiences financial distress.

Under the current plan, the Business-as-Usual Actions are (i) educating the Board to keep them informed of the Plan and the actions the Board would need to take to implement it, (ii) engaging in discussions with key linked FMIs as to the key elements of NSCC’s wind-down strategy and the expected actions of the respective link parties should a wind-down be implemented, (iii) developing and maintaining an index of internal data that includes the critical, ancillary, and non-critical services that NSCC provides to its membership, the support NSCC receives from DTCC and from its other affiliates, key third-party vendors, key personnel, NSCC assets and liabilities, and agreements and arrangements NSCC has with liquidity providers and with other FMIs, (iv) developing administrative wind-down guidance that identifies key Board and management actions that would be taken during the Recovery Phase and “Runway

Period”³⁴ prior to NSCC’s failure, and in connection with its Chapter 11 proceedings, and (v) preparing constituent documents for the Failover Entity³⁵ and evaluating capitalization options.

Pursuant to the proposed rule change, NSCC would remove the Business-as-Usual Actions section (currently Section 8.6.1) in its entirety because each of the actions outlined have either been completed or would be addressed in NSCC’s internal procedures going forward. This includes certain documents necessary to effect the wind-down aspects of the Plan that were in the process of being finalized when the Plan was adopted and have since been completed. Since adoption of the Plan,³⁶ NSCC has completed all necessary internal documentation, including DTCC’s internal wind-down guidance, the constituent documentation for the Failover Entity, and the evaluation of NSCC’s capitalization options. Further, the other actions included in this section (e.g., maintaining an index of non-critical services, educating the Board on the Plans) would be addressed, going forward, in DTCC’s Recovery & Resolution Planning Procedures maintained by the R&R Team.³⁷ As a result of this proposed change, current Section

³⁴ The Wind-down Plan identifies the time period leading up to a decision to wind-down NSCC as the “Runway Period.”

³⁵ As set forth in Section 8.4.1 (General Objectives and Approach) of the Plan, in the event that no viable or preferable third-party transferee timely commits to acquire the business and services of NSCC, the transfer will be effectuated to a failover entity created for that purpose (referred to as the “Failover Entity”), that would be owned by a trust held, to the extent of the value of the Failover Entity attributed to NSCC’s transferred business and services, for the benefit of NSCC’s bankruptcy estate.

³⁶ Supra note 6.

³⁷ The R&R Team is responsible for maintaining the DTCC “Office of Recovery & Resolution Planning Procedures” document. The purpose of these procedures is to communicate roles and responsibilities, and procedures for the documentation

8.6.2 (Recovery and Runway Period Actions) would be renumbered as Section 8.6.1.

Also, consistent with the proposed removal of Business-as-Usual Actions that have been completed, the proposed rule change would remove from the first sentence of proposed Section 8.6.1 (current Section 8.6.2) the words “Among other things, the guidance would provide” and replace them with “The DTCC Clearing Agency Wind-down Guidance developed in connection with this Plan provides.”

D. Technical Revisions

The proposal would also make several technical changes and corrections to the Plan. NSCC believes that these proposed changes would not substantively alter the meaning of the applicable sections and would improve the overall readability and clarity of the Plan. Specifically, NSCC is proposing to make the following changes and corrections:

1. In Section 1.3 (Summary), in the list of topics covered under the Plan, in the seventh bullet point, add “Recovery Corridor and” prior to the words “Recovery Phase” to correctly state the full name of this section of the Plan.

2. In Section 1.4 (Conventions), in the third paragraph, delete the words “conjunction with” and replace them with “support of,” and delete the words “also adopted” and replace them with “maintains.” Accordingly, under the proposed rule change this paragraph would state, “In support of this Plan, NSCC

of the R&W Plans covering each of the Clearing Agencies, in compliance with applicable rules and regulations. These procedures also describe the biennial closeout simulation exercise whereby the Plans for each clearing agency are tested through the simulation of a multi-member default.

maintains (i) a Market Disruption and Force Majeure Rule (the “Force Majeure Rule”), (ii) a “Corporation Default Rule” and (iii) a Wind-down of the Corporation Rule (the “Wind-down Rule”), each as described herein.”

3. In Section 2.1 (DTCC Business Profile), under the heading “DTCC SIFMU Subsidiaries”:

- In the description of NSCC, add “, netting,” after the word “clearing”; and after the words “exchange-traded,” delete “fund (“ETF”)” and replace it with “products (“ETPs”).”
- In the description of NSCC’s affiliated clearing agency, FICC, with respect to the Government Securities Division (“GSD”), add the word “netting,” after “clearing.”
- In the description of the Mortgage-Backed Securities Division (“MBSD”) of FICC, delete the modifier “To-Be-Announced” before the phrase “pass-through mortgage-backed securities issued by Ginnie Mae, Freddie Mac and Fannie Mae.”
- In the sentence that describes FICC’s publication of the GCF Repo[®] Index, add the parenthetical “(“GCF Repos[®]”)” after the words “general collateral finance repurchase transactions.”

4. In Section 2.2 (NSCC Guaranteed Services Summary), in the first sentence of the third paragraph, replace “CNS positions” with “CNS Fails Positions” because CNS Fails Position is a defined term under the Rules. Also, in the first sentence of the fourth paragraph, add the word “guaranteed” prior to “Balance Order System.”

5. In Section 2.3 (NSCC Non-Guaranteed Services Summary), under the heading, “Wealth Management Services,” in the second sentence, replace the word “procession” with “processing” to correct a typographical error.

6. In Section 3.2 (Criteria Used to Determine Criticality), in the second sentence that currently states, “Each service was assessed for criticality to determine the potential systemic impact from a service disruption,” add the word “resulting” after the word “impact.”

7. In Section 4.1 (DTCC and SIFMU Governance Structure), in the third paragraph, which lists each of the Board committees, delete “Board” before the words “Risk Committee.” Additionally, in the footnote in this section that provides the citation of a previous proposed rule change covering the Clearing Agency Risk Management Framework, add a reference to NSCC’s amended filing published July 9, 2020.

8. In Section 5.1 (Introduction), in the fourth paragraph, capitalize the word “board.” Under the heading “Market Risk Management,” in the last sentence of the first paragraph, remove the capitalization of the words “Clearing Agency Cross-Guaranty Agreements” because this is not a defined term in the Plan. For purposes of clarity and readability, the proposed rule change would also shift to Section 4.1 the footnote currently included in Section 5.1 regarding the Rules covering a “cease to act,” insolvency of a Member, and

associated actions.³⁸ Additionally, in the footnote included in this section that provides the citation to a previous proposed rule change covering the Clearing Agency Liquidity Risk Management Framework, add a reference to NSCC’s amended filing published December 11, 2020.

9. In Section 5.2.3 (Member Default Phase), under the heading “Market Risk Monitoring”:

- In the second sentence of the second paragraph, remove the capitalization from the first instance of the word “Monitoring.”
- In the first sentence of the fourth paragraph, (i) delete the word “close-out” and replace it with “liquidation,” and (ii) after the phrase “of the Defaulting Member’s portfolio,” add the parenthetical “(referred to as a “closeout”).”

10. In Section 5.2.4 (Recovery Corridor and Recovery Phase):

- In the first sentence of the first paragraph, add quotation marks and make bold the words “Recovery Corridor.”
- Under the heading “Recovery Corridor,” (a) in the second sentence of the second paragraph, in the current parenthetical that states “(i.e., as market stress increases, NSCC would expect the length of the Recovery Corridor to shorten),” replace the word “shorten,” with “be shorter,” and (b) in the second sentence of the last paragraph, after the word “closeout,” add an “s” to the end of the word “simulation.”

³⁸ See Rule 46 (Restrictions on Access to Services) and Rule 20 (Insolvency), supra note 5.

11. In Section 5.3 (Liquidity Shortfalls), in Table 5-C, which lists the tools that can be used to address liquidity shortfalls, in the entry for “Credit Facility,” in the column titled “Relevant Rules/Documents,” (a) delete “Currently, Section 2.03A(h) of the Credit Facility,” because reference to a specific section of the credit facility documentation is not necessary, (b) replace the words “facility terms” with “terms of the Credit Facility,” and (c) after the word “lenders,” delete the word “to” and replace it with “that.”

12. In Section 6.3 (Risk Mitigation), in the footnote that includes the citation to a previous proposed rule change covering the Clearing Agency Operational Risk Management Framework, add a reference to NSCC’s amended filing published December 16, 2020.

13. In Section 6.4 (Resources to Cover Non-Default Losses), in the footnote that includes the citation to a previous proposed rule change covering the Capital Policy and Capital Plan, add a reference to NSCC’s amended filings published July 27, 2020 with respect to the Capital Policy, and October 19, 2018 with respect to the Capital Plan.

14. In Section 6.6 (Market Disruption and Force Majeure Rule):

- In the second bullet point of the third paragraph remove the quotation marks from the words “Market Disruption Event” and delete the parenthetical “(as defined in the Force Majeure Rule)” because Market Disruption Event was defined earlier in this section.

- In the second sentence of the fourth paragraph, for purposes of reflecting present tense, delete the word “would” before the word “operate,” and pluralize “operate.”
- In the first sentence of the second paragraph:
 - for purposes of reflecting present tense and to improve readability, (a) remove the word “currently” prior to “the Force Majeure Rule” and (b) remove the words “is designed to clarify,” and replace them with “clarifies,” and
 - in order to correct a typographical error, insert the word “and” in between “its Participants” and “to mitigate.”

15. In Section 7.1 (Comprehensiveness), remove the capitalization from the words “Critical Services.”

16. In Section 7.2 (Effectiveness), under the heading “Reliability,” for the purpose of correcting typographical errors, (a) move the second footnote, currently at the end of the last sentence, to the end of the last sentence of the introductory paragraph of Section 7.2 and (b) in the text of the other footnote that currently reads, “See, for example, DTCC Whitepaper, *CCP Resiliency and Resources*, pg. 2, section 2 (June 2015),” remove “, section 2.”

17. In Section 8.2.1 (Potential Scenarios), in the second sentence of the third paragraph, replace “enhancements to the loss allocation process are” with “the loss allocation process is.” Accordingly, under the proposed rule change this sentence would state, “As noted above, the loss allocation process is designed to ensure that the full Clearing Fund can be applied

to losses arising from successive Member defaults that occur during an “Event Period”, and there can be successive rounds of loss allocations to address losses arising with respect to a given Event Period.”

18. In Section 8.2.2 (Wind-down Indicators), in the fourth bullet point of the third paragraph, in the sentence that currently states, “If a Defaulting Member also defaults in provision of other services to NSCC—to the extent that a Member were to default both in its membership obligations, and additionally in its capacity as either an investment counterparty holding material Clearing Fund cash or other corporate funds, or as a Settling Bank, this would reduce NSCC’s prefunded resources and add additional financial strain on Members,” add the words “a lender under the Credit Facility,” after the words “as either.”

19. In Section 8.4.1 (General Objectives and Approach), in the second paragraph, delete the words “have been amended to” after the words “the Rules” in order to more clearly reflect the fact that the Wind-down of the Corporation Rule³⁹ was adopted.

20. In Section 8.4.4 (Rules Adopted in Connection with the Wind-down Plan), in the subsection, “The Wind-down Trigger,” in the parenthetical, “(Trigger for Implementing Wind-down),” pluralize the word “Trigger.”

³⁹ Supra note 6.

21. In Section 8.4.5 (Wind-down and Liquidation of NSCC Following Transfer), in the third sentence of the first paragraph, delete the words “adoption of the,” before the words “Corporation Default Rule.”

22. In proposed Section 8.6.1 (currently section 8.6.2) (Recovery and Runway Period Actions), capitalize the word “chapter” in two places where “chapter 11” is not capitalized.

23. In Section 8.7 (Costs and Time to Effectuate Plan), (a) in the second sentence of the fifth paragraph, delete the word “of” between the words “detailed” and “analysis” and (b) at the end of the last sentence of this section, delete the phrase “, as provided in the Capital Requirements Policy.” As a result, under the proposed rule change, this sentence would state, “The estimated wind-down costs amount will be reviewed and approved by the Board annually.” Also, in the footnote in this section that refers to Section 5 of the Plan, correct the title of that section to state, “Member Default Losses through the Crisis Continuum.”

24. In Appendix 1 (Defined Terms), add each of the new defined terms based on the addition of such terms to the Plan, and delete the defined terms that were removed based on the deletion of these terms from the Plan.

2. Statutory Basis

NSCC believes that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, NSCC believes that the amendments to the R&W Plan are consistent with

Section 17A(b)(3)(F) of the Act⁴⁰ and Rule 17Ad-22(e)(3)(ii) under the Act,⁴¹ for the reasons described below.

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of NSCC be designed to promote the prompt and accurate clearance and settlement of securities transactions.⁴² The Recovery Plan serves to promote the prompt and accurate clearance and settlement of securities transactions by providing NSCC with a roadmap for actions it may employ to mitigate losses, and monitor and, as needed, stabilize NSCC's financial condition, which would allow it to continue its critical clearance and settlement services in stress situations. The Recovery Plan is designed to identify the actions and tools NSCC may use to address and minimize losses to both NSCC and its membership and provide NSCC's management and the Board with guidance in this regard by identifying the indicators and governance around the use and application of such tools to enable them to address stress situations in a manner most appropriate for the circumstances. Further, the Wind-down Plan establishes a framework for the transfer and orderly wind-down of NSCC's business. It establishes clear mechanisms for the transfer of NSCC's critical services and membership, and for the treatment of open, guaranteed CNS transactions in the event of NSCC's default. By doing so, the Wind-down Plan is designed to facilitate the continuity of NSCC's critical services and enable Members and Limited Members to maintain access to NSCC's services through the transfer of its

⁴⁰ 15 U.S.C. 78q-1(b)(3)(F).

⁴¹ 17 CFR 240.17Ad-22(e)(3)(ii).

⁴² 15 U.S.C. 78q-1(b)(3)(F).

membership in the event NSCC defaults or the Wind-down Plan is triggered by the Board.

As described above, the proposed rule change would update the R&W Plan to (i) reflect business and product developments, (ii) make certain clarifications, (iii) remove provisions covering certain “business-as-usual” actions, and (iv) make certain technical corrections. By helping to ensure that the R&W Plan reflects current business and product developments, and providing additional clarity regarding the framework for the transfer and orderly wind-down of NSCC’s business, NSCC believes that the proposed rule change would help it continue to maintain the Plan in a manner that supports the continuity of NSCC’s critical services and enables its Members and Limited Members to maintain access to NSCC’s services through the transfer of its membership in the event NSCC defaults or the Wind-down Plan is ever triggered by the Board. Further, by facilitating the continuity of its critical clearance and settlement services, NSCC believes the Plan and the proposed rule change would continue to promote the prompt and accurate clearance and settlement of securities transactions. Therefore, NSCC believes the proposed amendments to the R&W Plan are consistent with the requirements of Section 17A(b)(3)(F) of the Act.

Rule 17Ad-22(e)(3)(ii) under the Act requires NSCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency, which includes plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity

shortfalls, losses from general business risk, or any other losses.⁴³ The R&W Plan is designed to comply with Rule 17Ad-22(e)(3)(ii) and is consistent with the Act because it provides plans for the recovery and orderly wind-down of NSCC necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.

Specifically, the Recovery Plan defines the risk management activities, stress conditions and indicators, and tools that NSCC may use to address stress scenarios that could eventually prevent it from being able to provide its critical services as a going concern. Through the framework of the Crisis Continuum, the Recovery Plan addresses measures that NSCC may take to address risks of credit losses and liquidity shortfalls, and other losses that could arise from a Member default. The Recovery Plan also addresses the management of general business risks and other non-default risks that could lead to losses. The Wind-down Plan would be triggered by a determination by the Board that recovery efforts have not been, or are unlikely to be, successful in returning NSCC to viability as a going concern. Once triggered, the Wind-down Plan sets forth clear mechanisms for the transfer of NSCC's membership and business, and is designed to facilitate continued access to NSCC's critical services and to minimize market impact of the transfer. By establishing the framework and strategy for the execution of the transfer and wind-down of NSCC in order to facilitate continuous access to its critical services, the Wind-down Plan establishes a plan for the orderly wind-down of NSCC.

As described above, the proposed rule change would update the R&W Plan to (i) reflect business and product developments, (ii) make certain clarifications, (iii) remove provisions covering certain "business-as-usual" actions, and (iv) make

⁴³ 17 CFR 240.17Ad-22(e)(3)(ii).

certain technical corrections. By ensuring that material provisions of the Plan are current, clear, and technically correct, NSCC believes that the proposed amendments are designed to support the maintenance of the Plan for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses, and, as such, meets the requirements of Rule 17Ad-22(e)(3)(ii) under the Act.⁴⁴ Therefore, the proposed changes would help NSCC to maintain the Plan in a way that continues to be consistent with the requirements of Rule 17Ad-22(e)(3)(ii).

(B) Clearing Agency's Statement on Burden on Competition

NSCC does not believe that the proposed rule change would have any impact, or impose any burden, on competition. NSCC does not anticipate that the proposal would affect its day-to-day operations under normal circumstances, or in the management of a typical Member default scenario or non-default event. The R&W Plan was developed and documented in order to satisfy applicable regulatory requirements, as discussed above. The proposal is intended to enhance and update the Plan to ensure it is clear and remains current in the event it is ever necessary to be implemented. The proposed revisions would not effect any changes to the overall structure or operation of the Plan or NSCC's recovery and wind-down strategy as set forth under the current Plan. As such, NSCC believes the proposal would not have any impact, or impose any burden, on competition.

⁴⁴ Id.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

NSCC has not received or solicited any written comments relating to this proposal. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)⁴⁵ of the Act and paragraph (f)⁴⁶ of Rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NSCC-2021-004 on the subject line.

⁴⁵ 15 U.S.C 78s(b)(3)(A).

⁴⁶ 17 CFR 240.19b-4(f).

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

All submissions should refer to File Number SR-NSCC-2021-004. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NSCC and on DTCC's website (<http://dtcc.com/legal/sec-rule-filings.aspx>). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make

available publicly. All submissions should refer to File Number SR-NSCC-2021-004 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁷

J. Matthew DeLesDernier
Assistant Secretary

⁴⁷ 17 CFR 200.30-3(a)(12).